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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1993

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

GUSTAVO PIMENTEL,

Respondent.

PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BACKGROUND

The court below reversed Respondent's conviction for murder, holding that his statements to police should have been excluded. It held that Respondent had been subjected to custodial interrogation when he "became the focus of the investigation" during a non-Mirandized interview. The court further held that Respondent's subsequent Mirandized

statements should have been suppressed since they were the tainted product of the earlier non-Mirandized statements. App. A[1] at A-17, A-18.

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1. All references to App. A are to Appendix A as contained in Petitioner's Petition for Writ of Certiorari.

ARGUMENT

I

THE COURT IMPROPERLY FOUND RESPONDENT WAS SUBJECTED TO CUSTODIAL INTERROGATION BASED ON A SUBJECTIVE FACTOR

Respondent's opposition to the Petitioner's Petition for Certiorari is not supported by the record below. Respondent bases his opposition to certiorari on a mischaracterization of the facts and the court of appeal decision. Respondent's Brief in Opposition to Petition for Certiorari[2/] at 12.

While Respondent agrees that this Court's decision in Stansbury v. California (___ U.S. ___ (April 26, 1994) [U.S.L. Week 4279]) prohibits a trial court from considering for Miranda purposes an officer's subjective and undisclosed view concerning whether a

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2. Hereinafter cited as RBO

person being interrogated is the focus of an investigation, Respondent argues that the court of appeal decision is consistent with Stansbury. RBO at 12-13. Respondent claims that in finding he had been subject to custodial interrogation, the court of appeal "did not rely upon the subjective views of the interrogating officers at all, but rather on the fact that the investigating officers had demonstrably `disclosed' their suspicions to Respondent, `disclosed' being the operative term for the court's holding." RBO at 12. Thus, Respondent argues, the court found that he was "in custody" not because "the officers subjectively suspected petitioner [sic] of the homicide, but rather that the officers had communicated that suspicion to Pimentel "in no uncertain terms." RBO at 13, emphasis added.

In support of this claim, Respondent erroneously asserts in numerous ways and places throughout his brief that the court found him to be "in custody" when the officers "informed him they had hard, irrefutable evidence that he was involved in the homicide in question"[3] (RBO at 13-

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3. Examples of Respondent's mischaracterization of the basis for the court's ruling include:

> It was not what the officers believed but what they communicated to Pimentel that was determinative for the Court of Appeal, and what the officers effectively told him was that they had solid evidence that he was involved in the murder. It was only upon being given such information that the Court of Appeal believed a reasonable person, being told there was irrefutable evidence that he was a participant in the murder, would at that point, not have believed himself free to get up and leave the interrogation.

RBO at 14.

> It was at this point [when the officers falsely told Pimentel they had evidence he had been at the 7-Eleven], and only then, that the Court of Appeal found that the interrogation became `focused' and

> would have caused a reasonable person in Pimentel's situation to have believed he was not free to go, having just been told that the government had irrefutable evidence of his involvement in the homicide.

RBO at 18, emphasis added.

> "The nature of the interview changed, however, the California court expressly concluded, when the interrogation became much more focused and respondent was told by the officers that they had significant, if not conclusive proof of his involvement in the homicide."

RBO at 19, emphasis added.

> "It is clear, then, that the Court of Appeal considered it determinative that the officers communicated not merely their suspicions that he was involved in the murder, but that they informed him they had proof positive of his participation."

RBO at 20, emphasis added.

> "It would not be reasonable for a young Mexican boy to believe that after being told by police officers they had conclusive proof he was a murderer,. . ."

RBO at 23, emphasis added.

> "[W]hat distinguishes our case from Stansbury is that the officers in

14, emphasis added), when in fact the court never made such a finding.

Contrary to Respondent's assertions, however, and as the court of appeal decision makes abundantly clear, the court of appeal did not find Respondent to be in custody for Miranda purposes because of the officers' disclosed suspicions that he had been involved in the murder or because they told him they had evidence of his involvement in the murder.

As the court of appeal states in its opinion, the officers did not inform Respondent that they suspected him of the murder or that they had evidence he had been involved in the murder. They told him, albeit falsely, that they had a videotape of his car at the 7-Eleven

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> our case communicated in unequivocal terms their belief to respondent that he was a suspect, indeed, the suspect."

RBO at 17.

earlier on the night of the shooting[4]. App. A at A-7, A-17.

As the court held, "At this point we believe Pimentel ceased to be simply a source of general information, or even one of several possible leads, and became the focus of the investigation." App. A, A-17, emphasis added.

The court then concluded that after reviewing the totality of the circumstances[5], a reasonable man in Respondent's situation would have understood his freedom of movement had become so restricted that he was "in custody." App. A at A-18. Accordingly, the interrogation became custodial before

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4. The altercation occurred in National City about 10:00 p.m. at the 7-Eleven on 24th and Highland; the murder occurred after midnight at Coolidge and 16th Streets. App. A at A-3; A-5.

5. The setting at the police station, interrogation for 1-1/2 to 2 hours, and the use of false information. App. A at A-18.

Respondent was advised of his Miranda rights, the court held. App. A at A-18.

As the opinion makes clear, the court did not find Respondent to be "in custody" as a result of the officers' disclosed suspicions to Respondent that he had been involved in the murder. Rather, it found him to be "in custody" as a result of the police officers' subjective and undisclosed view that he was a suspect in the murder investigation. As this Court held in Stansbury, consideration of this factor is irrelevant to the assessment of whether a person is in custody for Miranda purposes. Stansbury, at 4279, 4281.

ARGUMENT

II

THE COURT IMPROPERLY FOUND THAT RESPONDENT'S MIRANDIZED STATEMENTS HAD BEEN TAINTED BY HIS EARLIER NON-MIRANDIZED STATEMENTS

Respondent's claim that the court of appeal's decision is consistent with Oregon v. Elstad, (470 U.S. 298, 309 (1985)), which held that a subsequent Mirandized statement is deemed not tainted by an earlier uncoerced non-Mirandized statement, is misplaced at best. RBO at 28, 29. Respondent bases this argument on a claim that his non-Mirandized statements "can by no means be characterized as uncoerced. RBO at 29.

In support of the claim that his non-Mirandized statements were coerced, Respondent relies solely on the court of appeal's finding that the police officers had falsely told him they had a videotape

of his car at the 7-Eleven[6/], which the court characterized as "an endeavor[ing] to extract a confession from him." RBO at 29. Respondent argues that this constituted "psychological compulsiveness (RBO at 30)," which he apparently equates with coercion.

Respondent has cited no authority for such a proposition, however, not surprising, since there is none. He also conveniently overlooks the trial court's finding that his statements were neither coerced nor involuntary. I RT 124.

Accordingly, it is abundantly clear that the court of appeal did not analyze the admissibility of Respondent's Mirandized statements under the Elstad

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6. Respondent also argues that the court found that the police had falsely told him "that they also had eyewitnesses who had positively identified him as being there [the 7-Eleven]." RBO at 29. However, nowhere in the court's opinion does the court make such a finding.

standard of voluntariness, but instead merely erroneously concluded that the statements were tainted by his earlier non-Mirandized statements.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the Writ of Certiorari should issue to review the decision of the California Court of Appeal in this case.

DATED this 29th day of June, 1994

Respectfully submitted,

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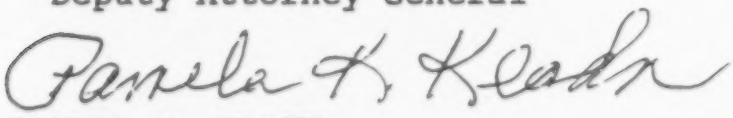

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No:
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THE STATE OF CALIFORNIA,
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I, THE UNDERSIGNED, say: I am a citizen of the United States, am 18 years of age or over, employed in the County of San Diego in which County the below stated mailing occurred, and not a party to the subject cause, my business address being 110 West A Street, Suite 1100, San Diego, California 92101.

I have served the within PETITION FOR WRIT OF CERTIORARI AND APPENDICIES as follows: To William K. Suter, Clerk, Supreme Court of the United States, Washington, D.C. 20543, an original and forty (40) copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; AND, by placing one copy in a separate envelope addressed for and to each addressee named as follows:

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Each envelope was then sealed and with the postage prepaid deposited in the United States mail by me at San Diego, California, on the 1st day of July, 1994.

There is a delivery service by United States Mail at each place so addressed or regular communication by United States Mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, July 1, 1994.

Susie Denno
SUSIE DENNO

Subscribed and sworn to before me
this 1st day of July 1994.

Jean M. Burns
Notary Public in and for said County and State

JEAN M. BURNS
NOTARY PUBLIC - CALIFORNIA
THE COUNTY OF SAN DIEGO
My Commission Expires Sept. 17 1995